

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/04/2004

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE D.MURUGESAN

Writ Appeal No.3568 of 2003
and
W.A.M.P.Nos.5793 and 6429 of 2003

M/s.Sri Krishna Smelters Ltd.,
rep.by the Director
S.F.No.110/1-E, Iveli Village
Akkamapet Post, Sankari-637301
Salem District. ... Appellant

-Vs-

1.The Tamil Nadu Electricity Board
rep.by the Chairman, 800, Anna
Salai, Chennai-600 002.

2.The Superintending Engineer
TNEB-Mettur Distribution Circle
Mettur Dam-636 401. ... Respondents

Prayer: Appeal against the order dated 21.10.2003 in W.P.No.29498 of 2003.

!For Appellant : Mr.S.Sivanandam

^For Respondents : Mr.N.Srinivasan

:J U D G M E N T

(Judgment of the Court was delivered by D.MURUGESAN, J.)

The appellant/unsuccessful writ petitioner is a steel furnace factory situated at Iveli Village, Akkamapet Post, Sankari, Salem District, having high tension service connection. Questioning the bill for the month of September 2002, amounting to Rs.43,72,715/- the appellant approached this Court by way of W.P.No.39201 of 2001 and by order dated 24.10.2002, this Court directed the appellant to pay Rs.10,00,000 /- within eight weeks from the date of the order and further directed the appellant to pay the remaining amount in

ten equal monthly instalments. Based upon the said directions, the Superintending Engineer, Mettur Electricity Distribution Circle, Mettur Dam, issued the impugned letter dated 19.11.2002 stipulating the instalments and the actual amount to be paid. In the said letter, he has also included the belated payment surcharge amounting to Rs.9,05,053/- . The appellant undertook to pay the said amount in the letter annexed in page 11 of the typed set of papers and accordingly made the payment. After effecting payment, the appellant filed a present writ petition in W.P.No.2 9498 of 2003, questioning the quantum of belated payment surcharge arrived at on the basis of 3%, as the appellant was liable to pay only 1.5%, and for a consequential direction to refund the excess amount paid. The learned single Judge dismissed the writ petition and the appellant is before this Court.

4. Mr.Sivanandam, learned counsel for the appellant submitted that in terms of Clause 20.02 of the Terms and Conditions of Tamil Nadu Electricity Board, if the amount is not paid within the time stipulated, the consumer is liable to pay the belated payment surcharge at the rate of 1.5% per mensem only. In terms of the second paragraph of Clause 19.05, the appellant had in fact obtained permission for payment of the amount, from the Superintending Engineer upto 25th of the calendar month and thereby he is liable to pay 3% only upto the extended period and the belated payment surcharge shall be computed only at 1.5% after the permitted period in terms of the first paragraph of clause 20.2. Hence, the impugned order in the writ petition, quantifying the belated payment surcharge at the rate of 3% is liable to be set aside and the excess payment made shall be refunded.

5. We have heard Mr.N.Srinivasan, learned counsel appearing for the respondent electricity board. He would, on the other hand, submit that paragraph 2 of clause 19.05 empowers the Superintending Engineer to extend the time upto 25th of the respective calendar month subject to the levy of belated payment surcharge at 3% per month and for non payment of consumption charges even beyond the period, the consumer should continue to pay 3% belated payment surcharge. Paragraph 1 of Clause 20.02 is redundant inasmuch as, it prescribes only 1.5% for those consumers who do not seek for extension of time.

6. In view of the above submissions, the only question that falls for our consideration is as to whether the consumer who has obtained extension for payment of the current consumption charges, is also liable to pay 3% belated payment surcharge after the extended period. The two relevant clauses relied upon by the learned counsel for the appellant viz., 19.05 and 20.02 read as under.

"Clause 19.05:- All High Tension bills, including those on account of miscellaneous charges, are to be paid within eight days from the date of the bill. The High Tension consumer shall pay the bills by cash or demand draft on local bank or cheque drawn on a bank at the same place as the headquarters of the Superintending Engineer. In case the cheque is dishonoured for any reason whatsoever, the High Tension consumer will be required to pay the High Tension bills by cash or demand draft thereafter. If the payment is not received within seven days (notice period) from the expiry of the eight days

period allowed for payment, the supply will be disconnected.

(However, the consumer shall be allowed to make payment after the expiry of the eight days period allowed for payment, but on or before 25th of the same calendar month on an application made to the Superintending Engineers of respective circles. On receipt of application, the Superintending Engineers of Electricity Distribution Circle may grant extension of time upto 25th of the respective due month subject to levy of BPSC at three per cent per month from the expiry or eight days period allowed for payment for a full month irrespective of number of days delayed. In this case, the disconnection shall be on the day following the extended due date for payment.)

Clause 20.02:- All charges included in monthly High Tension bills are to be paid within eight days from the date of the bill. Bills not paid by High Tension consumers within the time stipulated will be subject to a levy of surcharge at 1.5 per cent per mensem.

(However, for the consumers who are availing extension of time beyond the seven days notice period, as per Clause 19.05, the BPSC shall be at three per cent per month from the expiry of eight days period allowed for payment for a full month irrespective of number of days delayed.)"

7. As per Clause 19.05 of the High Tension bills including those on account of miscellaneous charges, are to be paid within eight days from the date of the bill. However, if the payment could not be made within the said period of eight days, the consumer could be allowed to make payment even after the period of eight days, but on or before 25th of the same calendar month on an application made to the Superintending Engineer of the respective circle. The Superintending Engineer of the respective circle is empowered to consider

the application and even if he decides to grant extension, such extension must be made subject to the levy of belated payment surcharge at 3% per mensem from the expiry of eight days period, irrespective of the number of days delayed.

8. In this context, we may also refer to Clause 20.06, which reads as follows.

"Clause 20.06:- The surcharge will be for a minimum period fifteen days if the delay in payment is less than fifteen days. If the delay is more than fifteen days and less than a month, the surcharge will be for a month.

1(If the delay is more than a month, the surcharge will be for the months delayed and for the fraction of the month, it will be proportionate to the number of days. The month means full month and not calendar month.)

2(However, for the consumers who are availing extension of time beyond the seven days notice period, as per Clause 19.05, the BPSC shall be at three per cent per month from expiry of the eight days period allowed for payment for a full month irrespective of number of days delayed)

9. An argument is sought to be advanced by the learned counsel for the appellant that in terms of the second paragraph of Clause 19.05, the consumer is liable to pay 3% belated payment surcharge only for the same calendar month and if the consumer is unable to pay within the extended period, the first paragraph of Clause 20.02 shall be applicable, thereby the consumer is liable to pay belated payment surcharge at the rate of 1.5% only per mensem. Clause 20.02, though speaks of a levy of surcharge at the rate of 1.5% per mensem, an amendment was introduced as paragraph 2 in the above clause by Tamil Nadu Electricity Board Permanent B.P.(FB) No.144, dated 31st July, 1999, and the belated payment surcharge of 3% was levied in case of consumers who seek extension of time and to such consumers who fail to pay even beyond the extended period.

10. As we have already pointed out, when a consumer opts for extension, he is made to pay 3% belated payment surcharge, and the consumer who does not even seek for extension is made to pay only 1.5% belated payment surcharge. Of course, as rightly pointed out by the learned counsel for the respondent Board that when the second paragraphs of Clause 19.05 and 20.02 were introduced on 31.7.1999, there ought to have been a corresponding amendment to the belated payment surcharge of 1.5% per mensem as contemplated under the first paragraph of clause 20.02. Nevertheless, in view of the provisions of second paragraphs to Clause 19.05 and 20.02, there is no escape for the consumer from the payment of levy of surcharge at the rate of 3% per month for the belated period. Those clauses cannot be restricted only for the month for which the current consumption charges are to be paid and at no stretch of imagination it can be contended that the said surcharge at 3% per month cannot be extended beyond the period of extended period. The learned single Judge, while considering both the clauses, has rightly observed that in terms of Clause 20.02, the appellant should pay 3% belated payment surcharge. The said finding cannot be interfered in view of the reasons stated above.

11. As for the request of the consumers for payment of current consumption charges (when we refer current consumption charges, it relates to the consumption charges for the current month) in instalments, the same is ordered only taking into consideration of the fact that industries should not suffer for want of electricity. In the absence of any provision in the terms and conditions of the supply of electricity connection, the question of grant of instalments is impermissible in respect of payment of current consumption charges. Admittedly, the petitioner is a defaulter, who had applied for extension of time for payment. A defaulter cannot turn around and say that he will pay only the belated payment surcharge at the rate of 1.5% when the specific provisions of the second paragraph of Clauses 19.05 and 20.02 enables the respondent Board to levy the belated payment surcharge at the rate of 3%. We also find that the petitioner had undertaken to make the said payment, as

this Court had granted indulgence for making the payment in instalments. On the basis of the undertaking, the appellant has also paid the entire current consumption charges including the belated payment surcharge at the rate of 3%.

12. In the circumstances, we find absolutely no merit in interfering with the order of the learned single Judge, as well as the impugned order in

the writ petition and the consequential prayer for refund of the excess amount. Accordingly, the writ appeal fails and the same is dismissed. Consequently, connected W.P.M.P.Nos.5793 and 6429 of 20 03 are also dismissed. No costs.

Index : Yes
Internet:Yes

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